

**Judiciary Committee Public Hearing
RAISED BILL NO. 6578
AN ACT CONCERNING THE PENALTY FOR A CAPITAL
FELONY
March 2, 2009**

**TESTIMONY OF EDWARD J. GAVIN, PRESIDENT OF THE
CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION,
IN SUPPORT OF RAISED BILL 6578**

Chairman McDonald, Chairman Lawlor, and Distinguished Members of the Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice. We support passage of Raised Bill 6578.

**CCDLA OPPOSES THE IMPOSITION OF CAPITAL PUNISHMENT
IN ALL CIRCUMSTANCES:**

CCDLA is firmly committed to the abolishment of the Death Penalty in Connecticut and nationwide. We believe that the imposition of Capital Punishment is never appropriate. We believe that Capital Punishment is unconstitutional, risks the

execution of the actual innocent, is disproportionately applied, is morally and ethically wrong, is clearly not a deterrent to violent crime, and is an egregious waste of ever limited taxpayer dollars. We believe that the appropriate sentence in the most serious of criminal cases is the imposition of a sentence of Life without Parole (LWOP). In 2005, prior to Michael Ross's execution, CCDLA passed a resolution noting our Collective Opposition to Capital Punishment. CCDLA presented our opposition at a Press Conference held at the LOB on January 13, 2005. Then President Michael Fitzpatrick called on the Connecticut's state legislature to abolish the death penalty in the state and called on Governor Rell to stay the execution of Michael Ross pending action by the General Assembly. CCDLA has been active in our judicial system, opposing the imposition of the Death Penalty. We have opposed the imposition of the death penalty as Amicus at the Connecticut Supreme Court and our members have served as counsel of record in Capital cases.

CCDLA has been active in the legislative process testifying against capital punishment before the Judiciary Committee. We have previously submitted written testimony in opposition to the death penalty and we are committed to opposing capital punishment until it is abolished. CCDLA has partnered with the Connecticut Network to Abolish the Death Penalty (CNADP). CCDLA supports the vision of the Connecticut Network to Abolish the Death Penalty and supports it's mission statement that:

"CNADP stands strongly opposed to the death penalty, as it is poor public policy. The death penalty does not deter crime, it is not cost efficient, it kills the mentally ill, it is economically and racially biased, it kills the innocent, and it does not provide closure to families - it is simply revenge, not justice."

FACTS REGARDING CAPITAL PUNISHMENT IN CONNECTICUT:

The execution of Michael Ross on May 13, 2005 was the last execution to take place in Connecticut . Prior to Michael Ross's execution, the last execution in Connecticut took place in 1960. Following the overturning by the U.S. Supreme Court in 1972 of the death penalty provisions in all states, the Connecticut State Legislature revised the statutes defining capital felonies and established new procedures for the imposition of the death penalty. These changes were enacted into law, effective October, 1973. Life imprisonment without the possibility of release has existed here as a statutory alternative to the death penalty since 1985. The minimum age to receive the death penalty is 18; a new provision to forbid the execution of the mentally retarded was enacted into law effective July, 2001. The last bill introduced to abolish the death penalty was House Bill 6012 in January, 2005. It was passed by the Judiciary Committee and by the Appropriations Committee and debated on the floor of the House of Representatives on March 30, 2005 where it failed by a vote of 60-89.

There are currently 10 individuals on Death Row. After the Supreme Court declared Connecticut's death penalty unconstitutional in 1972, the state adopted a new death penalty statute in 1973. Between 1973 and 2008, there were approximately 4600 murders, 13 death sentences, and one execution.

ACTUAL INNOCENCE:

Since 1973, 130 prisoners on death row have been exonerated. The average time spent on death row by an exoneree is 9.5 years. DNA has played a role in exonerating 17

death row prisoners. Yet in many death penalty cases, DNA testing proves impossible because of a lack of testable evidence. The causes of wrongful conviction include eyewitness misidentification, police coercion, perjury, prosecutorial misconduct, and inadequate representation. (Staff Report, House Judiciary Subcommittee on Civil & Constitutional Rights, Oct. 1993, with updates from DPIC). From 1973-1999, there was an average of 3.1 exonerations per year. From 2000-2007, there has been an average of 5 exonerations per year. 17 people had been sentenced to death before DNA proved their innocence and led to their release.

Connecticut has familiarity with cases of actual innocence. After being released from prison on June 6, 2006, James Calvin Tillman was officially exonerated by DNA testing on July 11, 2006. With the assistance of the Connecticut Innocence Project, a voluntary organization and part of the Public Defender Services for the State of Connecticut, Tillman walked out of prison after serving 16 years on a rape and kidnapping conviction. On May 16, 2007 the Connecticut legislature unanimously voted to present Tillman with \$5 million to assist him in living comfortably following his wrongful imprisonment.

Miguel Roman, served 20 years in Connecticut prisons before he was freed based on similar DNA tests. Mr. Roman had been behind bars since 1988 for allegedly killing 17-year-old Carmen Lopez. Authorities reopened the case after the Connecticut Innocence Project, which represents Roman, asked them to conduct DNA testing on evidence from the crime scene. The test results excluded Roman and pointed to another man, Pedro Miranda, who authorities charged with Lopez's murder and two other unsolved murders from 1986 and 1987. Mr. Roman awaits final disposition of his case.

COST TO THE DIVISION OF PUBLIC DEFENDER SERVICES :

The following information indicates the immense expense incurred by the Division of Public Defender Services in representing individuals accused of Capital Crimes. We are currently spending a disproportionately large percent of the Divisions budget on a very small percentage of the overall cases. The prosecution and defense of capital cases is fiscally irresponsible.

“The increasing number of death penalty cases has continued to have a significant cost impact on the Division of Public Defender Services. In 2007-08 the annual cost of the Capital Defense & Trial Services Unit alone was \$1,412,860. This does not include the expenses of expert witnesses or payment for legal services to Special Public Defenders who must be retained in many of these cases.”

When these expenses are added, along with the costs attributable to field offices for the trial and appeal of capital cases, the best estimate of the major portion of the cost of defending capital cases in 2007-08 was \$2,383,334 or 5% of the entire public defender budget. At the same time the total number of capital cases, sixty-one (61) cases handled at the trial level or on appeal and in habeas matters, represented .066% of the Division’s total caseload. Thirty (30) of these cases were death penalty cases pending at the trial level or on appeal, as well as seven (7) habeas corpus cases in which the petitioner was under sentence of death.

“In addition to the millions of dollars expended by the Division’s own staff, there are capital cases which require the services of Special Public Defenders where a conflict of interest exists between multiple accused. There were twenty-three (23) such cases in 2007-08. In accordance with Commission policy and accepted national ABA professional standards, two (2) attorneys must be assigned to represent each defendant charged with a capital crime.” **SOURCE: COST OF PUBLIC DEFENDER SERVICES, JANUARY, 2009**

**COSTS TO HOUSE DEATH ROW INMATES-OFFICE OF
LEGISLATIVE RESEARCH ANALYSIS:**

In a February 13, 2008 ORL report (2008-R-0099), Christopher Reinhart, Senior Attorney, wrote concerning the COST OF INCARCERATION AND COST OF A CAREER CRIMINAL. Attorney Reinhart’s report is summarized below. The annual cost to incarcerate an inmate in Connecticut in Fiscal year 2006 was \$44,165. Capital inmates are incarcerated at Northern. The cost to house an inmate at Northern is \$100,385 or an increase of over \$56,000 per year.

SUMMARY

According to information provided by the Office of Fiscal Analysis, the annual cost to incarcerate an inmate in Connecticut in FY 06 was \$ 44,165. This figure includes fringe benefits, statewide cost allocation program distribution (which the Department of Correction (DOC) must pay other state agencies to provide services), building depreciation, equipment depreciation, bond interest, and miscellaneous revenue. A chart below displays the annual costs for an inmate in specific facilities.

**Annual Cost to Incarcerate an Inmate in Specific Connecticut Facilities
in FY 06**

<u>Facility</u>	<u>Annual Cost Per Inmate</u>
Bergin Correctional Institution	\$ 31,008
Bridgeport Correctional Center	\$46,923
Brooklyn Correctional Institution	\$34,564
Cheshire Correctional Institution	\$41,476
Corrigan/Radgowski Correctional Institution	\$39,745
Carl Robinson Correctional Institution	\$34,455
Enfield Correctional Institution	\$41,576
Garner Correctional Institution	\$86,694
J. B. Gates Correctional Institution	\$38,288
Hartford Correctional Center	\$48,794
MacDougall/Walker Correctional Institution	\$44,663
Manson Youth Institution	\$65,855
New Haven Correctional Center	\$45,654
Northern Correctional Institution	\$100,385
Osborn Correctional Institution	\$34,121
Webster Correctional Institution	\$35,123
Willard/Cybulski Correctional Institution	\$29,493
York Correctional Institution	\$54,090

¹ John J. Donohue III, *Capital Punishment in Connecticut, 1973-2007: A Comprehensive Evaluation From 4600 Murders to One Execution*, 2008, http://works.bepress.com/john_donohue/55.

Cumulative Average Inmate Rate	\$ 44,165
Cost to house Capital Inmate	<u>\$100,385</u>
Extra Cost per Inmate Per Year	\$56,220

CONCLUSION:

The Connecticut Criminal Defense Lawyers Association strongly supports the elimination of Capital Punishment. While proponents of capital punishment argue that the death penalty deters crime, scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. Indeed, opinions by an overwhelming majority of criminal experts affirm that the death penalty has no deterrent value. (Radelet & Akers 1996). Housing a convict for life without the possibility of parole equally deters criminal misconduct and serves to more humanely protect society.

Raised Bill 6578 is a substantial step by the legislature to eliminate the death penalty. We applaud those sponsors and supporters. CCDLA recognizes the gravity of the issue and supports passing of Bill 6578 as a major step in the elimination of Capital punishment in Connecticut.

Respectfully submitted,

EDWARD J. GAVIN
PRESIDENT -CCDLA
On behalf of the Connecticut
Criminal Defense Lawyers
Association